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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,140	01/13/2004	Jace Agee	1990.AGEE.NP	3819
26986	7590	08/09/2006	EXAMINER	
MORRISS O'BRYANT COMPAGNI, P.C. 136 SOUTH MAIN STREET SUITE 700 SALT LAKE CITY, UT 84101			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,140

Applicant(s)

AGEE ET AL.

Examiner

Frank Vanaman

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **Status of Application**

1. Applicant's amendment, filed May 22, 2006, has been entered in the application. Claims 1-6 and 8-20 remain pending, with claim 7 having been canceled.

### **Claim Objections**

2. Claims 8 and 9 are objected to because of the following informalities: claim 8 is written to depend from claim 7, which has been canceled, claim 9 depends from claim 8. In that applicant has asserted the subject matter of claim 7 is incorporated into claim 1, claim 8 is understood to depend from claim 1, rather than claim 7. Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

3. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 14, as amended, at line 3, it is not clear what is being referenced by "said a collapsed state" - note that claim 10 recites the handle as being movable to a "non collapsed position" (e.g., lines 8-9), but does not refer to "a collapsed state".

### **Claim Rejections - 35 USC § 102**

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-6, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Foss et al. (US 4,637,626). Foss et al. teach a cart for hauling items, including a bed comprising at least two sections (17, 52) joined together for pivotal motion (at 65) between extended and collapsed positions, plural right and left handle portions (81, 82), connected together by a cross bar (83) which functions as a handle portion as well, and serves as a spacer between elements 81 and 82 and which links them together to allow them to both be moved in unison, and at least one wheel assembly (30, 31) secured to the cart at a position opposite that of the handle portions; the handles being pivotally

connected to the cart (at 76) and further including plural locking devices (90, 94) for securing the handle portions in an extended use position; at least one frame (13, 14, 15, 16, etc) surrounding the bed (17); a cart bed positioning mechanism constituting the respective contacting ends of portions 13 and 45, and portions 14 and 44 which inter-engage to position the cart in a non-collapsed state (see figures 4 and 5); a handle positioning mechanism constituting the respective engaging sides of 71 and 15, and 74 and 15, which position the handle in a non-collapsed position; the cart bed including a fender element (117) positioned between the wheels (e.g., 30, 31) and the bed (e.g., 52), wherein the cart is provided with a handle (215) portion, opposingly spaced with respect to at least one wheel, and which functions as an auxiliary handle usable to support and carry the cart when in a collapsed position (see col. 16, lines 50-54), and wherein a locking device is further provided (325) which is positioned and arranged to hold the frame elements in a collapsed position (col. 16, lines 41-50).

### **Claim Rejections - 35 USC § 103**

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foss et al. in view of Austin (US 5,915,723, cited previously). The reference to Foss et al. is discussed above and fails to teach that the locking device (e.g., 90, 94) allows positioning at a non-perpendicular angle. Austin teaches a cart having a handle (78), which is positionable with respect to a cart portion in various angles (note solid and phantom lines, figure 1, and figure 11) through the use of a locking device (note elements 80, 82, 84, figure 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the locking devices taught by Foss et al. as variable angle devices as taught by Austin, for the purpose of allowing adjustment of the handle position, for example to change the handle elevation to accommodate a user's desired position or orientation (see Austin, col. 5, lines 52-53).

### **Response to Arguments**

8. Applicant's arguments, filed with the amendment, have been carefully considered. Applicant has argued that the material of previous claim 7, now incorporated into claim 1, is not taught by Foss et al. The examiner disagrees: the facing portions of elements 44 and 14; and elements 45 and 13 (also not abutting sides of 46, 16; edges of 52, 17) constitute a mechanism for such a purpose to the breadth claimed. Applicant has asserted that the rejections of the material of claims 2, 6, 12, 13, and 17 should be made under §102 since Foss et al. teach an auxiliary handle as described at column 16, lines 50-54 (see page 10 of applicant's remarks). The examiner appreciates applicant's careful analysis of the reference to Foss et al., and, inasmuch as Foss continues to teach the subject matter of applicant's amended claim 1, claims 2 and 6 are thus rejected under 35 USC §102, directly in view of applicant's suggestion. Applicant has asserted that Foss et al. does not teach a locking mechanism for positioning the handle portions proximate the bed portions of the cart in a collapsed position. The examiner disagrees - note col. 16, lines 41-50, just prior to the section applicant has pointed out as teaching the auxiliary handle, wherein Foss et al. explicitly teach a locking device. Applicant has asserted that Foss et al. cannot anticipate claim 10 as amended. The examiner agrees. Note the reference to Austin, previously cited, which teaches that a handle may be positioned variably at angles which are either perpendicular (phantom, figure 1) or non-perpendicular (solid, figure 1) with respect to another frame element (e.g., 12) by a positioning mechanism (figure 11). Applicant's comments concerning the fender as recited in claim 18 are noted. Foss et al. Teach an element which can perform as a fender to the breadth claimed, and which is positioned between a wheel 30, 31 and the bed portion 52. Note, for example, figure 4, solid lines, which illustrates this limitation.

### **Conclusion**

9. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

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Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

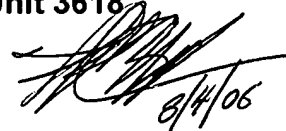
A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



8/4/06